IN THE HIGH COURT OF BOMBAY AT PANAJI

CRIMINAL REVISION APPLICATION NO. 44 OF 2007

State,
Through Public Prosecutor,
Panaji-Goa. .... Petitioner

V/s

Shri Aires Rodrigues,
R/o. T-1, B-30,
Ribandar Retreat,
Ribandar – Goa. .... Respondent

Mr. C.A. Ferriera, Public Prosecutor for the Appellant.

Mr. A. F. Diniz, Advocate for the Respondent.

CORAM : N.A. BRITTO, J.

DATE : 26th JULY, 2007

ORAL ORDER :

Heard Shri C.A. Ferreira, the learned Public Prosecutor and Shri A.F. Diniz, the learned Counsel on behalf of the Respondent.

2. The Respondent/Accused was prosecuted by the State by filing charge sheet under Section 509 IPC. Alongwith the charge sheet, the State had filed an application dated 28/06/2006 in terms of Section 473 of the Code of Criminal Procedure, 1973, to condone the delay. The Accused had also filed an application dated 17/10/2006 stating that no cognizance could be taken as

the charge sheet was filed beyond the period of one year. In terms of the judgment of Apex Court in ***State of H.P. V/s. Tara Dutt and Anr. (2000 (1) SCC 230)*** the Accused was required to be heard while deciding such an application for condonation of delay/extension of time in filing the charge sheet. The Apex Court has also required that the discretion conferred on the Court has to be exercised judicially and while exercising this discretion, a speaking order should follow indicating the satisfaction of the Court that the delay was satisfactorily explained and the condonation of the same was in the interest of justice.

3. Admittedly, no speaking order, after hearing the Accused was passed by the learned JMFC on the said application of the prosecution dated 28/06/2006. The application filed by the Accused dated 17/10/2006 was thereafter rejected as the learned Magistrate felt, that the learned Magistrate had become functus officio after disposing the application of the State dated 28/06/2006. The learned Sessions Judge also did not decide the application dated 28/06/2006 on merits of the same. The least which was expected of the learned Sessions Judge was to have set aside both the orders of the learned JMFC passed on applications of the prosecution dated 28/06/2006 and of the Accused dated 17/10/2006 and remanded the matter for disposal in accordance with law. Interest of justice demands that both the said applications dated

28/06/2006 and 17/10/2006 of the prosecution and of the accused respectively, are heard together and decided on merits of the same, after hearing the prosecution as well as the accused.

4. In view of the above, this Revision succeeds. The orders of the Courts below on the said applications dated 28/06/2006 and 17/10/2006 are hereby set aside and the learned JMFC is hereby directed to hear both the parties and dispose of the said two applications in accordance with law.

N.A. BRITTO, J.

NH/-